

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

HERSHELL JONES,)	
)	
Petitioner)	
)	
vs.)	No. CIV-06-1157-C
)	
STATE OF OKLAHOMA,)	
)	
Respondent)	

ORDER OF DISMISSAL WITHOUT PREJUDICE

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach entered a Report and Recommendation on October 23, 2006, recommending that the action be dismissed unless Petitioner timely paid the filing fee or showed good cause for the failure to do so.

Having failed to file Objections within the prescribed time limit, Petitioner has instead filed a “Motion to Withdraw Writ of Habeas Corpus Without Prejudice to Exhaust State Court Remedy.” Mr. Jones is entitled to dismiss his writ of habeas corpus prior to an answer, and the Court will permit him to do so without prejudice. To the extent that Mr. Jones requests that the petition be held in abeyance pending exhaustion in state court, the absence of a paid filing fee or permission to proceed in forma pauperis means the petition has not yet been filed, and abating it would be inappropriate.

Accordingly, the Court adopts the Report and Recommendation of the Magistrate Judge and, at the request of the petitioner, dismisses this action without prejudice.

IT IS SO ORDERED this 29th day of November, 2006.



ROBIN J. CAUTHRON
United States District Judge